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## BOOK REVIEWS.

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CASES ON PERSONS AND DOMESTIC RELATIONS, SELECTED FROM DECISIONS OF ENGLISH AND AMERICAN COURTS. By Albert M. Kales. American Casebook Series. James Brown Scott, General Editor. St. Paul, West Publishing Co., 1911, pp. xxix, 654.

CASES ON MARRIAGE AND DIVORCE, SELECTED FROM DECISIONS OF ENGLISH AND AMERICAN COURTS. By Chester G. Vernier, Professor of Law in the College of Law, University of Illinois. Part IV of Kales' Cases on Persons and Domestic Relations. American Casebook Series, James Brown Scott, General Editor. St. Paul, West Publishing Co., 1912, pp. xvi, 180.

THE LAW OF PERSONS OR DOMESTIC RELATIONS. By Epaphroditus Peck, Associate Judge of the Court of Common Pleas for Hartford County, Connecticut, 1897-1912; Lecturer in Yale University Law School. Chicago, Callaghan & Co., 1913, pp. xiv, 545.

There are many obvious difficulties in writing a law book; in writing a book on the subject which is generally called "Domestic Relations," one of the fundamental difficulties seems to lie in determining what is included in the subject. Many, perhaps most, of the writers who have approached the task of writing a text or of making a collection of cases on this subject have found it wise to treat it rather comprehensively, and have included a discussion of the law of Husband and Wife (including generally Marriage and Divorce), the law of Incapacity (especially that arising from Coverture and from Infancy, though sometimes including that arising from Insanity, from Drunkenness, and from Alienage), and the law of Parent and Child, of Guardian and Ward, and of Master and Servant. Such, in general, is the treatment of the subject by Schouler, Tiffany, Rodgers, and Long. On the other hand, Professor Woodruff, in his excellent collection of cases, omits the subjects of Guardian and Ward and of Master and Servant; Professor Smith in his casebook omits also the subject of Marriage and Divorce, and treats Incapacity only from the stand-point of coverture and infancy; Dr. Ewell in his admirable work adopts boldly the position of treating only the subject of Incapacity as arising from coverture, from infancy, from insanity, from drunkenness, and from duress. Such diversity of treatment is but natural, especially in the preparation of a work intended for the use of students. The so-called subject of "Domestic Relations," considered from one point of view, may properly be held to include all the law arising from the relations within the ancient family; from this point of view, the wide and comprehensive treatment is justified. From another point of view, however, the general subject presents two prominent and distinct features; first, the matters relating to capacity; and second, the matters relating to property rights and relative personal rights. The former is a fundamental element which enters necessarily into the law of Contract, of Crime, and of Tort;

the latter is an element which can be fairly well segregated and treated with reference to the various domestic relations which give the name to the whole subject. The question naturally arises: shall the author (or the teacher) take up one, or the other, or both, of these elements? The three works noted at the head of this review show a divergence of views on this question.

Professor Kales, following pretty closely the views of Professor Smith, takes up only the relations of Parent and Child and of Husband and Wife (omitting any consideration of Marriage and Divorce) and in his treatment of Incapacity refers only to that arising from coverture and from infancy. Presumably the incapacities arising from drunkenness, insanity, and alienage are considered in the volumes of the American Casebook Series which treat of Contracts, Crimes, and Torts. Professor Vernier's small book merely supplies the omission of Marriage and Divorce from Professor Kales' treatment of the Law of Husband and Wife and is announced as Part IV of the latter's work.

Judge Peck has avowedly taken a more comprehensive view of the general subject, which, he says in his preface, is "grouped into three parts: The Law of Marriage, including Marriage and Divorce, and also the personal and property rights of Husband and Wife; the law of Infancy, covering the status of Infancy, and also the protective relations of Parent and Child and Guardian and Ward; and the law of Master and Servant, or Employer and Employee." This treatment includes all phases of the subject except the incapacities of drunkenness, insanity, and alienage, which, of course, have the same jural importance as those arising from coverture and infancy, but are perhaps excluded because they are outside of the original and traditional field of "Domestic Relations."

Doubtless the scope of Professor Kales' book has been determined to some extent by what has been the custom of law-schools in teaching the course on Domestic Relations, but it seems clear to the writer of this review that, (even as supplemented by Professor Vernier's addition) it is too limited or else not limited enough. It has been the fashion of late to treat the law of Master and Servant largely from the point of view of tort, with some reference also to the contract and agency phases of the relation; but the relation of Master and Servant has still a distinctive character, and as is pointed out by Judge Peck in his preface, the new view of this relationship, as expressed in the Workmen's Compensation Acts, seems likely to take it quite out of the field of torts. There is certainly some ground for including this branch in a book on Domestic Relations. So also it seems rather drastic to ignore completely the relation of Guardian and Ward. So much for the omissions. Another possible criticism arises on the subject of Incapacity. If matters of capacity are to be taken up in the books and in the courses on Contracts, Crimes, and Torts, why treat of them again here? Of course it is obvious that there are many reasons why it is better to consider these matters in a book or a course on "Persons and Domestic Relations." But if that view is accepted, and if one is to treat of the capacity of persons of abnormal status, one ought to have something to say about drunkards, lunatics, and aliens.

Aside from this question of the limits of the general subject, little fault

can be found with any of the books. The cases selected by Professors Kales and Vernier are very well adapted to the development of the subjects treated, and the annotations are adequate and pertinent. Perhaps an undue amount of space is devoted to the statutory liability of the wife for family expenses, a liability which exists in only a few states. A few minor errors and misstatements have crept into the book: on page 28, note 11, the holding in *Hardy v. Waters* is misstated; on page 292, *Fitts v. Hall* is stated as arising out of a sale of lands, instead of a sale of goods; and on page 327, note, *Hewitt v. Warren* is referred to as an action in deceit instead of in contract.

Judge Peck has prepared the best statement of the existing law of Domestic Relations that has come to the knowledge of the writer of this review. He gives a clear and concise statement of the present law and does not ignore or slight, as do so many writers, the historical development of the rules and the minority views on points as to which there is conflict of authority. It is hard to see how his work could be improved on, either in arrangement or in execution. Unfortunately the table of cases seems to be devised with an intent to conceal, instead of to disclose, the location of the cases cited.

E. H.

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THE FIXED LAW OF PATENTS AS ESTABLISHED BY THE SUPREME COURT OF THE UNITED STATES AND THE NINE CIRCUIT COURTS OF APPEALS, by William Macomber, Counsel in Patent Causes, Lecturer on the Law of Patents in Cornell University College of Law. Second Edition with Additions. Boston: Little, Brown, & Co., 1913. pp. clxix, 1044.

This is neither text-book, case-book, encyclopedia, nor digest, but rather a work sui-generis, although resembling somewhat more a digest than anything else.

The author has arranged his subject into topic headings, in alphabetical order instead of logical sequence, and under each heading has collected numerous cases stating the law and the rules pertinent thereto. To this extent the book is like a digest, but the citations consist not so much of condensations, or digests, of the cases as of statements of the law therein declared, in clear, concise excerpts or, so nearly as possible, in the words of the decision.

This has necessitated, apparently, a close reading of the cases themselves, not merely a perusal of the syllabi, with resulting exactness. For this very reason, however, it behooves the practitioner who would make use of a statement to read the case himself, for the excerpts, while not of dicta, are often from a minor point in the case, sometimes one entirely foreign to the real decision.

The law of patents being founded wholly on statute, the decisions are necessarily as to its interpretation and application to particular facts. In this latter regard the excerpts are occasionally so lacking in statement of facts as to be quite unintelligible to a lawyer unfamiliar with this particular subject, and for even a patent lawyer many of them would be rather references to a possibly pertinent case than a summary thereof. The title is due, the author says, to the fact that he has used only those rulings which have